Illinois Wills, Joint Tenancy, Inheritance Tax, and Probate Procedure

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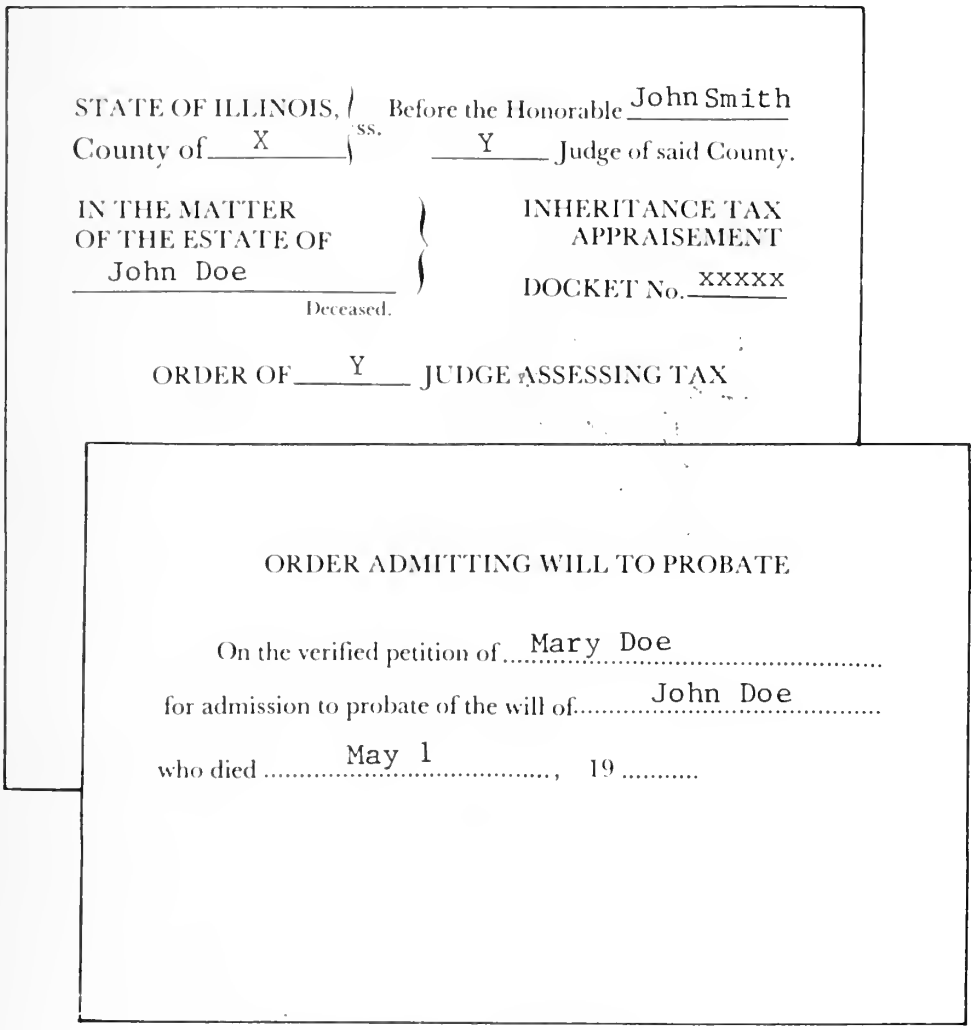

STATE OF ILLINOIS, } ss.
County of X }

Before the Honorable John Smith
Y Judge of said County.

IN THE MATTER OF THE ESTATE OF
John Doe
Deceased.

INHERITANCE TAX APPRAISEMENT
DOCKET No. XXXXX

ORDER OF Y JUDGE ASSESSING TAX

ORDER ADMITTING WILL TO PROBATE

On the verified petition of Mary Doe
for admission to probate of the will of John Doe
who died May 1, 19

University of Illinois at Urbana-Champaign
College of Agriculture Cooperative Extension Service

By C. Allen Bock and Donald L. Uchtmann

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Illinois Wills

Distribution of Property

A will is important for a variety of reasons. Perhaps the most important purpose of a will is to distribute property according to the personal desires of the decedent. If there is no will, or if property is not disposed of by provisions in the will, all the decedent's property will be distributed according to the Illinois intestate succession laws. The effect of these laws is shown in the following chart.

Descent of Property by Illinois Law When There Is No Will

Closest surviving relative	Distribution of property
Wife or husband, and children	½ to wife or husband; ½ to children[a]
Wife or husband, but no children	All to wife or husband
Children, but no wife or husband	All to children equally[a]
Parents, brothers, or sisters but no surviving spouse or children	Parents, brothers, and sisters share equally[b]
Only grandparents or their descendants	(a) ½ to maternal grandparents;[d] (b) ½ to paternal grandparents.[d] When there are no relatives in (a), then all goes to those in (b), and vice versa.
Only great-grandparents or their descendants	(a) ½ to maternal great-grandparents;[d] (b) ½ to paternal great-grandparents.[d] When there are no relatives in (a), then all goes to those in (b), and vice versa.
Only collateral heirs[c]	Shared equally by nearest kindred of deceased.
No relatives	All real property goes to the county in which the land is located; all personal property goes to the county in which the deceased resided.[e]

[a] If one of the children has died, his children share his part.
[b] Descendants of a deceased brother or sister get the deceased's share. If one parent is deceased, the surviving parent gets a double share.
[c] Collateral heirs are relatives such as cousins, uncles, aunts, great-uncles, and great-aunts. Persons in the same and nearest degree of relationship to the deceased get equal shares when only collateral heirs survive.
[d] If one has died, the survivor gets a double share; if both have died, their descendants share equally.
[e] If the deceased is not a resident of the state of Illinois, all the personal property goes to the Illinois county in which the property is located.

A Will Can Provide for Special Needs. If expressed in a will, your special desires take precedence over the laws of descent. You as a husband, for example, may feel that your wife should inherit all of the real estate instead of having one-half of it go by law to your young and inexperienced children. Or you as a wife may want to make some provision for your mother rather than have all your property go to your husband and children as it would by law.

The marital deduction for Federal Estate Tax purposes is $250,000 or 50 percent of the adjusted gross estate, whichever is higher. In order to qualify for the marital deduction, however, property must be passed in a qualifying manner to the surviving spouse. The will is a key instrument in providing for the desired marital deduction. Many counselors feel that a will is the foundation document for most estate and inheritance tax planning.

If there is no will, the law takes a rigid course. The same amount of property is given to a married, well-established daughter as to a juvenile and dependent daughter. An invalid and needy son gets no more than his healthy and prosperous brother.

By making a will, you can exercise your judgment and provide for each member of your family according to his needs, and plan for estate and inheritance tax savings.

Limitations on Passing Property by Will

The disposition of some property cannot be controlled by a will. The property owner should consider these items when planning for the distribution of the owner's estate.

Surviving Spouse Statutory Share. Under Illinois law the surviving spouse is entitled to inherit not less than one-third of all the property of the deceased spouse unless there is a pre-nuptial agreement. If the deceased spouse has a will and leaves less than one-third of the property to the surviving husband or wife, that person can "renounce" the will and take the statutory one-third share, one-half if the decedent left no descendants. The renunciation must be in writing and filed within 7 months of the time when the will is admitted to probate.

Joint Tenancy Property. Under Illinois law property owned by the decedent and another (or others) as "Joint Tenants with Right of Survivorship" automatically passes to the surviving joint tenant(s) on the decedent's death (see page 7). This property does not pass by will, even if specifically mentioned, and is not subject to the probate administration process. There are certain estate tax disadvantages associated with owning property in this form in some situations.

Life Insurance. If life insurance is payable to someone other than the "estate," for example, a spouse, son, or daughter, then the proceeds are payable directly to the beneficiary and do not pass by any provisions of the will.

Surviving Spouse's and Child's Award. Illinois law provides for an allowance to the surviving spouse to enable that spouse to support the family during the beginning period of administration, whether or not the deceased spouse had a will. For example, the surviving spouse is entitled to an amount not less than $5000 plus $1000 for each dependent child for a period of 9 months. If it appears to the court that a greater amount is needed to support the family, then a greater amount can be awarded.

Children Born After the Will Is Made. Unless mentioned in some way in the will, a child born after the will is executed will be entitled to the same portion of the estate that the child could have claimed if the parent had died without a will.

Rights of an Adopted Child. A child who has been lawfully adopted has the same inheritance rights as a natural child. Similarly, the adopting parents inherit from the child as though the child were their own. There is one exception to this: property received by the child from natural parents or relatives goes back to them upon the child's death if he or she has not left a will.

Rights of a Stepchild. A stepchild inherits from the natural parent (or parents, if divorced), but does not inherit from the stepparent unless the child is legally adopted by the stepparent or is mentioned in the stepparent's will.

Other Reasons for Having a Will

Appointing a Guardian for Minors. To cover the possibility that both parents might die before their children are adults, parents usually wish to provide a guardian for their minor children. This can be done by naming a guardian in their wills.

Illinois allows two types of guardianships. A guardian of the person of a minor has custody and is responsible for the education of the minor. This type of guardian influences such decisions as where the minor lives and goes to school. A guardian of the estate of a minor has responsibility for the care, management, investment, and distribution of the minor's estate.

Appointing an Executor. The maker of a will can name any person he or she wants to carry out the directions of the will. This person is the executor, whose duties are to preserve, manage, and distribute the estate

during the period of administration, which usually lasts 9 to 11 months, but sometimes longer if estate and inheritance tax returns are filed. When a will fails to name an executor, or if no will has been made, the Circuit Court appoints an administrator to do the work of the executor.

Unlike the executor, the administrator is always required to post a bond with surety to idemnify the heirs against any loss due to mishandling of the estate. Whether an executor or an administrator is in charge, the legal procedures involved in settling estates make it necessary to obtain legal assistance.

To qualify as executor of the estate of any decedent, a person must be of sound mind, a resident of the United States, and at least 18 years of age. In addition, a person must not have been adjudged an incompetent under Illinois statutes or have been convicted of an infamous crime. If a nonresident of Illinois is named as executor, he or she must designate a resident to be the agent for receiving notice and service of process. The court may require a non-resident executor to furnish a bond with surety.

An administrator must meet the same qualifications as the executor, with the added requirement of having to be a resident of Illinois. Any corporation qualified to accept and execute trusts in Illinois is qualified to act as administrator and executor.

To serve as an administrator, certain persons are entitled to preference according to the following order:

1. The surviving spouse.
2. The children.
3. Legatees.
4. The grandchildren.
5. The father and mother.
6. The brothers and sisters.
7. The next of kin.
8. The person representing the estate of a deceased ward.
9. The public administrator.
10. A creditor of the estate.

If the person who is entitled to act as an administrator would rather not serve in that capacity, that person has the privilege of nominating any other person to serve as administrator.

A person not qualified to act as an administrator solely because of non-residence can nominate an administrator in accordance with the above order of preference.

The choice of an executor is an important decision in assuring smooth and timely administration of your estate. Choose a person or company that is (a) willing to serve, (b) able to serve, (c) will have time to serve, and (d) is familiar with your estate and business affairs. Some persons prefer a corporate executor such as a bank or trust company to serve in this capacity, either alone or jointly with a family member. The fees for serving in this position are available from these companies, and it is advisable to discuss the fees and responsibilities before appointing the executor.

How To Make a Will

When making a will, consult with an attorney, who should do the final drafting of the document. This statement has been made many times, but it is worth repeating for several reasons.

Through the years certain language in wills has been construed by the courts to have a specific meaning. The attorney is trained to use words so that your intent is achieved. In addition, there are many Illinois laws which the attorney will know that relate to the requirements for a valid will. There are no short cuts to the drafting of a good will. A lifetime of care in accumulating an estate and nurturing a family is surely worth the same care in transferring the property and providing for the family on death.

Formal Requirements. The maker of a will — the testator — must be of sound mind and memory and at least 18 years old. The will must be in writing, signed by the maker, and witnessed by no less than two persons. It is best to have at least three persons witness the will, since one of them may move away or die before the maker of the will dies. While a will can be "proved" without having the witnesses present in the Probate Court, it is easier to prove when they are there. Persons who will or could be beneficiaries under the will should not be witnesses. Your attorney will help you obtain what the law describes as "credible witnesses."

Drafting a Will. The following steps are recommended:

1. Make a record of all the property you own and the way title is held, or, better still, let your attorney examine all your deeds, property contracts, and insurance policies.
2. Decide in conference with your family and your attorney how your property should be distributed.
3. Have your attorney prepare a rough draft of the will so that you can study it at leisure and have it reviewed by your family.
4. After revising the rough draft to your satisfaction, have the attorney prepare the final will and supervise the signing and witnessing of it, for which there are strict legal requirements.

How To Revoke a Will. If a person has made a will and wants to revoke it, he or she can do so in several ways:

1. By burning, by tearing into small pieces, or by obliterating it.
2. By making a new will, which automatically supersedes the former one to the extent that the wills are inconsistent or, even better, by clearly declaring in the new will that the former will is revoked.
3. By declaring in writing that the former will is revoked and by having that declaration signed and witnessed in the same way as the former will.

Other situations may partially revoke one's will. A divorce revokes gifts to the former spouse but usually does not affect other gifts in the will. Children born after a will is made may share in the estate even though no specific provision is made for them. Consult with your attorney about the procedure to follow.

Changing a Will. You are free to amend your will at any time. Whenever an important change occurs, whether in your family, in your property holdings, or in death tax laws, see how it affects your will. If you feel that the will should be altered, you can do so by a codicil — an amendment to the will. The codicil must be signed and witnessed in the same way as the original will. (It is often better to rewrite the entire will, incorporating changes into the text.) Again, your attorney should be consulted when the provisions of your will are changed.

Questions Frequently Asked About Wills

1. *Does everyone need a will?* Generally, yes! In almost every instance a good argument can be made for making a will.
2. *Does a will increase probate cost?* Only rarely would a will increase probate costs. In fact, well-drafted wills reduce the cost and time of probate. If the executor of a will is given broad powers to administer the estate, the time and cost of receiving court approval of many administrative acts is greatly reduced. Discuss the kinds of powers you want to give your executor with your attorney.
3. *If a witness to my will dies, should I have the will re-executed (signed)?* In some cases this is a good procedure. Ask your attorney about this when the witness dies.
4. *Where should I keep my will?* Keep a copy at home so that you can review the provisions when necessary. It is usually suggested that the signed copy be put in your safe-deposit box. Some counselors suggest that you tell the executor where the will is located so that it can be quickly obtained upon your death.
5. *How frequently should a will be reviewed?* Whenever important changes occur, whether in your family, in your property holdings, or in tax laws. Even if there are no important changes, review the will at least once every three years.
6. *Should a will be filed?* There is no requirement that a will be filed until death. On death Illinois law requires any person who has the will in his or her possession to file it with the clerk of the court. Illinois law also provides that any person willfully altering or destroying a will without the direction of the testator (person making the will), or any

person willfully secreting a will for a period of 30 days after the death of the testator is known to said person, will be subject to a fine and/or imprisonment.

Joint Tenancy

Joint tenancy is a form of co-ownership of property, whereby two or more persons own property together. It differs from other types of co-ownership in that a joint tenant becomes the sole owner of the entire property upon the death of the other joint tenant. This is called the *right of survivorship.*

There are two main differences between transferring property by will and by joint tenancy. First, a will takes effect only when the maker of that will dies, whereas joint tenancy is effective the moment it is made. Second, a will is not necessarily final in the assignment of property, since the maker can amend the will at any time; but once property is placed in joint tenancy, that transfer is final, unless the tenants agree to make further transfers, or there are special statutory or contractual provisions, such as those that apply to checking accounts and savings accounts.

Points To Consider About Joint Tenancy

If an owner plans to put property in joint tenancy, he or she should keep in mind that there is no assurance that the property will return to the owner upon the death of the other joint tenant, for a joint tenant can destroy the right of survivorship at any time — by sale, mortgage, partition, or gift. If the right of survivorship is destroyed, the original owner of that property is left with only his or her own share upon the other tenant's death.

There are other things to consider about joint tenancy. Property in joint tenancy passes to the survivor without probate proceedings and without administration, except as the property is subject to state and federal taxes. Even when tax returns are required on property in joint tenancy, probate costs are usually less because no other administration is required. Also, since a surviving tenant has immediate title to the property, creditors of the decedent are prevented from asserting claims against the property except in unusual circumstances.

On the other hand, there are possible disadvantages from joint tenancy when large estates are involved. Federal tax laws usually assume that the decedent owned all the joint tenancy property, and that the entire property is taxed to the decedent, unless the surviving tenant can prove that he or she contributed to the purchase price or that the property was originally taken in joint tenancy by gift or inheritance from someone other than the

decedent. Also, joint tenancy may create unnecessarily high taxes in the estate of the survivor. These disadvantages are important, and you should consult with your attorney and tax counselor before taking title to property as joint tenants.

How To Place Property in Joint Tenancy

To place real property in joint tenancy, you have to use a deed containing the words, "to _____ and _____ *not in tenancy in common but in joint tenancy.*" If a deed does not contain these or similar words, it usually conveys a tenancy-in-common title (the survivor retains only his or her own undivided share at the death of the other).

Placing personal property in joint tenancy involves a number of different procedures. Bank deposits, for instance, are in joint tenancy if made payable to two or more persons, and if these persons sign an agreement creating a joint tenancy. This agreement may also permit the bank to pay any one of them. Shares of stocks and bonds are in joint tenancy if issued in the names of two or more persons or their survivors. Other personal property may be placed in joint tenancy by a person's will or by a written statement creating a joint tenancy with the right of survivorship. If a husband and wife wish to place a car in joint tenancy, they simply request the Office of the Secretary of State to issue the title in both names.

A word of warning should be said about safe-deposit boxes. Simply placing the box in joint tenancy does not mean that the *contents* are in joint tenancy; each item in the safe-deposit box must be declared to be in joint tenancy and not in tenancy in common. If there is a separate statement to this effect, all the joint tenants should sign it.

Illinois Inheritance Tax

The Illinois Inheritance Tax is a tax on the privilege of receiving property by reason of a person's death. It is not, therefore, a tax on the property received. The estate's personal representative and the beneficiary receiving the property are each personally liable for the tax, which is a lien on any property passing to a beneficiary until the tax is paid.

Date of Tax Return and Date Tax Is Due

An inheritance tax return must be filed in duplicate with the circuit clerk within 10 months from the date of the decedent's death. The tax due must be paid within the same 10-month period to avoid statutory interest penalties.

Property That Is a Taxable Inheritance

The value of the taxable inheritance includes:

1. Real estate and personal property owned by the decedent on death. This property is taxable based on its appraised fair market value on death. However, if the executor elects and other conditions are met, farm real estate may qualify for a special valuation, the same as that allowed for federal estate tax purposes under Code Section I.R.C. 2032A. See **Cooperative Extension Publication AE 4432** for more details. This publication is available on request from county Extension advisers or the Department of Agricultural Economics, 305 Mumford Hall, Urbana, Illinois 61801.
2. Property not owned by the decedent on death but transferred by gift within two years of death in "contemplation of death." This property would be taxed at its fair market value on the date of the decedent's death.
3. The fair market value of the decedent's fractional interest in joint tenancy property. For example, assume that the decedent and spouse owned as joint tenants with right of survivorship a farm with a fair market value of $200,000 on death. $100,000 would be a taxable inheritance. This treatment is usually different from the treatment of joint tenancy property for federal estate tax purposes.
4. Life insurance payable to the estate. If the life insurance is payable to a beneficiary other than the estate, it is not subject to the Illinois inheritance tax even though the decedent owned the policy on death.
5. Property transferred by the decedent before death when the actual transfer is not until death. For example, if the decedent transferred legal title to a piece of property to his children but retained the right to receive the income from the property until death, the full value of the property would be a taxable inheritance on his or her death.
6. Other special items will also be included, for example, exercised general powers of appointment. The attorney will help the personal representative determine what is a taxable inheritance and how to establish its value.

Treatment of Life Estates and Remainder Interests

Assume that the decedent, by will, bequeaths a life interest in a 100-acre, $100,000 farm to a 65-year-old spouse. Their two children (called remaindermen) receive the property subject to their surviving parent's life estate.

For Illinois inheritance tax purposes, it is necessary to determine the value of the life estate and remaindermen interests because each person inheriting pays tax on the value of his or her own inheritance. Mortality tables and income rates of 5 percent are used to determine the respective inheritance. In the example above, the spouse's inheritance is approximately $41,500. Each child would have an inheritance of approximately $29,250.

Deductions

Funeral expenses, expenses of administration, debts of the decedent, federal income tax liabilities of the decedent, last illness expenses, real and personal property taxes which are a lien against the property on decedent's death, and the federal estate taxes are all deductions which reduce the taxable estate.

Inheritance Tax Exemptions and Rates

Husband, wife, child[a] ..... Exemption: $40,000[b]

Lineal ancestors (such as parents or grandparents), grandchildren or their decendants, son-in-law, daughter-in-law .... Exemption: $20,000

Brother, sister ..... Exemption: $10,000

Nonexempt inheritance is taxed as follows:

$ 0 to	$ 50,000	— 2% of amount
50,000 to	150,000	— $ 1,000 plus 4% of amount over $50,000
150,000 to	250,000	— $ 5,000 plus 6% of amount over $150,000
250,000 to	500,000	— $11,000 plus 10% of amount over $250,000
500,000 to	...	— $36,000 plus 14% of amount over $500,000[c]

Aunt, uncle, niece, nephew, first cousin, and lineal descendants thereof ..... Exemption: $500

Nonexempt inheritance is taxed as follows:

$ 0 to	$ 20,000	— 6% of amount
20,000 to	70,000	— $ 1,200 plus 8% of amount over $20,000
70,000 to	170,000	— $ 5,200 plus 12% of amount over $70,000
170,000 to	...	— $17,200 plus 16% of amount over $170,000

Others ..... Exemption: $100

Nonexempt inheritance is taxed as follows:

$ 0 to	$ 20,000	— 10% of amount
20,000 to	50,000	— $ 2,000 plus 12% of amount over $ 20,000
50,000 to	100,000	— $ 5,600 plus 16% of amount over $ 50,000
100,000 to	150,000	— $13,600 plus 20% of amount over $100,000
150,000 to	250,000	— $23,600 plus 24% of amount over $150,000
250,000 to	...	— $47,600 plus 30% of amount over $250,000

[a] Legal adoption is the equivalent of blood relationship.

[b] On inheritances over $270,000 the exemption is reduced to $20,000, and an additional credit of $1,200 is allowed against the tax due.

[c] On taxable transfers over $5 million to a surviving spouse, the rate is 6% instead of 14% on the excess.

Calculating the Illinois Inheritance Tax

The rate at which an inheritance is taxed depends on the relationship of the beneficiary to the decedent, the rate becoming higher as the relationship becomes more distant. The rate also increases with the size of the inheritance. The beneficiaries are separated into three classes for purposes of determining the rates and exemptions (see page 10).

Example:

Assume that the decedent's spouse and children received the following taxable inheritances.

Spouse	Son	Daughter
$250,000	$150,000	$150,000

The Illinois inheritance tax would be calculated as shown below.

Spouse		Each child	
Inheritance	$250,000	Inheritance	$150,000
Exemption	40,000	Exemption	40,000
Net	$210,000	Net	$110,000
Tax on $150,000	$ 5,000	Tax on $50,000	$ 1,000
6% of 60,000	3,600	4% of 60,000	2,400
Total tax	$ 8,600	Total tax (each child)	$ 3,400
Total family tax is ($8,600 + $3,400 + $3,400) or			$ 15,400

Summary. The determination of the assets subject to tax, the proper deductions, and the amount of the tax usually requires the assistance of an attorney or some other person who is trained and experienced in such matters.

Out-of-State Real Property

Even though the decedent is a resident of Illinois at the time of death, all real estate located in another state would not be subject to Illinois inheritance tax. Instead, the real estate would be subject to the inheritance tax of and probate in the state where it is located. The location of tangible personal property may also determine the applicable state inheritance tax. These items specifically should be discussed with the attorney for the estate.

Inheritance Tax Consents

In order to open safe-deposit boxes, transfer such items as stocks, bonds, bank deposits, or the decedent's share of joint tenancy bank accounts or savings deposits, an inheritance tax consent must be acquired from the Attorney General of Illinois. Some consents, such as a consent to open the safe-deposit box, may be acquired by telephone. Most other consents are obtained by filing the request on Form No. 600. The attorney will assist the personal representative in applying for the consents.

Until consents are issued, only four items can be removed from the safe-deposit box when it is opened.

1. The decedent's will.
2. Burial instructions and military discharge papers.
3. Deed to the cemetery lot.
4. Insurance policies payable to a named beneficiary other than the estate, if the beneficiary is present and requests the policies.

Probate of an Illinois Estate

Why Probate an Estate?

Probate is not always necessary, but in many estates it is a procedure which is very important.

Among other things, probate bars the claims of creditors against the decedent's property if the claims are not filed within a specified period of time. This procedure, of course, tells the purchaser of the property that debts, expenses, and taxes have been paid, and that the property is being sold free of any such claims. Normally, if the property of the decedent is properly inventoried, the creditors have six months to file claims from the date the Letters of Administration are issued.

Probate also officially determines the decedent's legal heirs and the beneficiaries of the decedent's last will. This step is important in clearly stating the kind and quality of ownership the heir or beneficiary has in the decedent's property.

There are many other reasons for probating an estate, some of which are mentioned below. An attorney can help the family examine the necessity of probating the estate.

Court-supervised Probate Procedure

The usual steps in probating an estate are outlined below:

1. The will is filed with the Clerk of the Court. The place of probate is the county of the decedent's place of residence.

2. Proof of heirship and decree of heirship are established. The names of heirs must be determined so that the right persons are notified of the probate of the will. If there is no will, these heirs will receive the property.
3. A petition to probate the will and for Letters Testamentary is filed. If the will names an executor, then that person is entitled to Letters Testamentary, which give the executor or administrator the legal right to administer the estate of the decedent. A copy of this document is usually required before persons owing money to the decedent or holding property of the decedent will pay the money or transfer the property to the executor or administrator.
4. The personal representative (executor or administrator) files a personal bond and takes an oath that he or she will faithfully discharge the duties of the office according to the law. Surety on the bond is necessary unless the surety is made unnecessary by a provision of the decedent's will.
5. The will is admitted to probate. A will with a proper attestation clause may be admitted to probate without any court testimony or affidavit from witnesses to the signing of the will unless an heir requests such formal proof. A proper attestation should indicate that at least two witnesses saw the decedent sign the will, that they witnessed the will in the presence of the testator (person who made the will), and that the testator was of sound mind and memory when signing the will.
6. After the executor or administrator is appointed, that person is required to file an inventory with the court describing the assets subject to probate.
7. Claims against the estate, costs of administration, and federal estate, Illinois inheritance, and fiduciary income taxes are paid.
8. The distribution of the decedent's property is approved by the court.
9. The personal representative files a Final Account, receives approval of the account, and the estate is closed.

Other Aspects of Probate

There are many other aspects to probate. Guardians may have to be approved or appointed; court approval may be necessary before any sale, exchange, or mortgage of the estate's assets; if there is a will, contest litigation may be necessary; the surviving spouse and child's awards may have to be determined and approved; and, appraisals of property may have to be obtained.

It is obvious that the probate of a will and the administration and settlement of an estate involve the technical skill of a lawyer. Involved in all settlements following death are rights, obligations, and common law and statutory duties not apparent to average citizens. They may think that they have a clear-cut notion of exactly what is involved in settling the estate when, in fact, they may not be aware of many elements. Generally the executor or administrator makes the decision as to the attorney who will represent the estate during probate.

Time of Probate

The duration of the probate process varies. Probate may be as short as seven months, but it may take up to three or more years in estates involving audits of the federal estate tax return and complicated distribution and notice requirements. If a longer period is required, portions or all of the property can sometimes be distributed and many items finalized even though the estate cannot be formally closed.

Small Estates

If the value of the personal property is less than $15,000, a small estates affidavit can be prepared which will permit any person or corporation indebted to or holding personal property of the decedent to transfer the property according to the requirements of the law without the necessity of the probate procedure.

Summary Administration

A new optional procedure has been created by which estates valued at less than $50,000 can be distributed directly to the heirs or beneficiaries by court order without appointing an executor or administrator. The process is initiated by filing a petition to settle the estate without probate. When the petition is approved, the court will direct the payment of claims and the distribution of the personal estate to those entitled to it without appointing an executor or administrator and without the filing of an inventory or account. The written consent of all the heirs and persons receiving property by the will is required. If one of them is a minor or disabled person, consent can be given on that person's behalf by a parent, spouse, child of legal age, or guardian.

The summary administration method can be used even though the estate is subject to the federal estate tax or the Illinois inheritance tax if the taxes have been paid or arrangements have been made to pay them. Creditors are protected by a requirement that legal notice of summary

administration be published for three successive weeks in a newspaper, beginning one month before the hearing on the petition. In addition, each person receiving property must furnish a surety bond in the value of his share, whether the will waives surety or not. Titles to real estate may not be cleared or transferred by summary administration.

Summary administration offers a useful option for settling estates, especially in those cases where there is no will and where the heirs and assets are few. Using this new procedure it is possible to distribute the estate as soon as the court order is issued, without waiting for the six-month claim period to expire. The procedure applies only to the estates of persons who die on or after January 1, 1980. Because it does have some disadvantages compared to full probate, it is advisable to consult an attorney before using this procedure.

Independent Administration

To minimize court filing and supervision, the General Assembly has created an optional system for independent administration of estates. This system can be used for the estate of any person who dies on or after January 1, 1980, if the value of the estate does not exceed $150,000. Once the estate has been opened, the executor or administrator can elect to act as an independent representative, making it possible for him to fully administer the estate without a court order or filings (except for a final report), provided that no objection is raised by an interested person at any time during the administration of the estate. The independent administration of an estate will not be approved unless at the time of the hearing on the petition the court finds that the gross value of the decedent's probate estate in Illinois does not exceed $150,000. Again, it is best to consult an attorney about the specific requirements and implications of this procedure.

This circular replaces Circulars 1062 and 1080.

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